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Douglas Phillips

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IPSOLON LLP  
111 SW COLUMBIA  
SUITE 710  
PORTLAND, OR 97201

EXAMINER

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ART UNIT

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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/814,378  
Filing Date: March 30, 2004  
Appellant(s): PHILLIPS, DOUGLAS

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Douglas Hancock  
For Appellant

**EXAMINER'S ANSWER**

Art Unit: 3632

This is in response to the appeal brief filed October 20, 2006 appealing from the Office action mailed April 19, 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

Art Unit: 3632

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2004/0035992A1	Watts	2-2004
4184657	Jardine	1-1980
5,021,059	Kensey et al.	6-1991

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watts 2004/0035992 in view of Kensey et al. (Kensey) 5,021,059. Watts teaches a visible displacement indicia (stepped gripping means on the edge of the cam members

Art Unit: 3632

(5) in contact with crack). The stepped gripping members are capable of correlating the quality of cam placement in a rock. The visual indicia (paragraph 0071) can be observed from the side surface of the cam (310 or 700). Furthermore, the more relative movement between the cams the less cross-sectional area of the cams is seen and the less color is therefore seen. The intersecting markings in the middle of the cams indicates the quality of grip. Watts discloses all of the limitations of the claimed invention except for the indicia indicating when cam placement is not safe. Kensey clearly teaches that it is known to provide a color coded system for placement indicating that it is not safe to proceed (see column 8, lines 31 and column 10, lines 16) including degrees of severity being green and red indicia). Color-coding as supported by Kensey is well known in the art to indicate degrees of danger for example "green, yellow, and red zones" are known to indicate various degrees of danger. Red is known for stop or a high degree of danger, yellow is known for caution or a moderate degree of danger, and green is known for safety, highest degree of safety, or lowest degree of danger (for example stop lights and water safety). It would have been obvious to one having ordinary skill in the art to have modified Watts to have used the well known color coded zones of green, yellow (as well known, see Shivers 5,067,667),

Art Unit: 3632

and red indicia as taught by Kensey along the stepped gripping means on the edge of each cam for the purpose of indicating the degree of safety of the device when placed in the cracked surface.

Claims 1 and 3-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jardine 4,184,657 in view of Kensey 5,021,059. Jardine teaches a visible placement indicia (stepped gripping means on the edge of the cam members (5) in contact with crack). The stepped gripping members are capable of correlating the quality of cam placement in a rock. The visual indicia can be observed from the side surface of the cam (5) as shown in figure 4. Furthermore, the more relative movement between the cams the less cross-sectional area of the cams is seen and the less color is therefore seen. Regarding claim 5, the intersecting markings in the middle of the cams indicates the quality of grip. Jardine discloses all of the limitations of the claimed invention except for the color coded zones/markings. Kensey clearly teaches that it is known to provide a color coded system for placement indicating that it is not safe to proceed (see column 8, lines 31 and column 10, lines 16) including degrees of severity being green and red indicia). Color-coding as supported by Kensey is well known in the art to indicate degrees of danger for example "green,

Art Unit: 3632

yellow, and red zones" are known to indicate various degrees of danger. Red is known for stop or a high degree of danger, yellow is known for caution or a moderate degree of danger, and green is known for safety, highest degree of safety, or lowest degree of danger (for example stop lights and water safety). It would have been obvious to one having ordinary skill in the art to have modified Jardine to have used the well known color coded zones/markings of green, yellow (as well known in the art, see Shivers 5,067,667) and red indicia as taught by Kensey along the stepped gripping means on the edge of each cam for the purpose of indicating the degree of safety of the device when placed in the cracked surface.

#### **(10) Response to Argument**

In response to applicant's argument that Kensey is not related to a climbing aid but instead describes a medical instrument used to close incisions punctures is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case,

Art Unit: 3632

Kensey addresses the particular problem of the applicant's invention in regard to the placement of the invention for safety indicating proper or improper placement of the device using color coded indicia (column 10, lines 28). Kensey teaches that the instrument or aid is has properly placed when the green indicia(78) is displayed however when the red indicia (76) is shown this indicates improper placement. This clearly provides that although Kensey is nonanalogous art it is definitely pertinent to the applicant's particular problem which is the proper placement of an instrument or device (climbing aid) and the use of color codes indicia to show when the device has been properly placed or improperly placed.

In response to applicant's arguments that Watts nor Jardine does not disclose visible placement indicia the examiner would like to point out that the visual indicia (paragraph 0071) can be observed from the side surface of the cam (310 or 700 of Watts and stepped gripping means on the edge of the cam members (5) in contact with crack of Jardine). Furthermore, the more relative movement between the cams the less cross-sectional area of the cams is seen and the less color is therefore seen. The intersecting markings in the middle of the cams indicates the quality of grip.

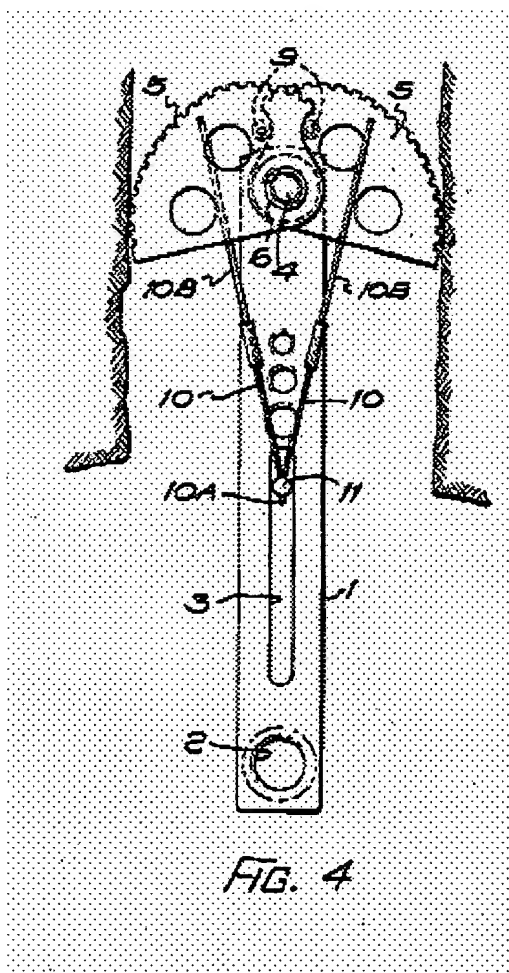


Art Unit: 3632

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the suggestion, or motivation is in the knowledge generally available to one of ordinary skill in the art of climbing aids. Watts and Jardine clearly teach of climbing aids for the placement within a rock during mountain climbing using indicia such as the gripping means on the edge of the cam members (5) in contact with crack which indicates the quality of the cam placement. An experience climber having understood the function of the climbing aids of Watts and Jardine would know through experience that when the aid is in its fully extended position or close to its fully extended position (as shown best in Jardin in Figure 4 included below) wherein the contact area of the stepped gripping means (the side view which would allow the climber to see the stepped gripping means, such as teeth or grooves, or notches) of the aid relative

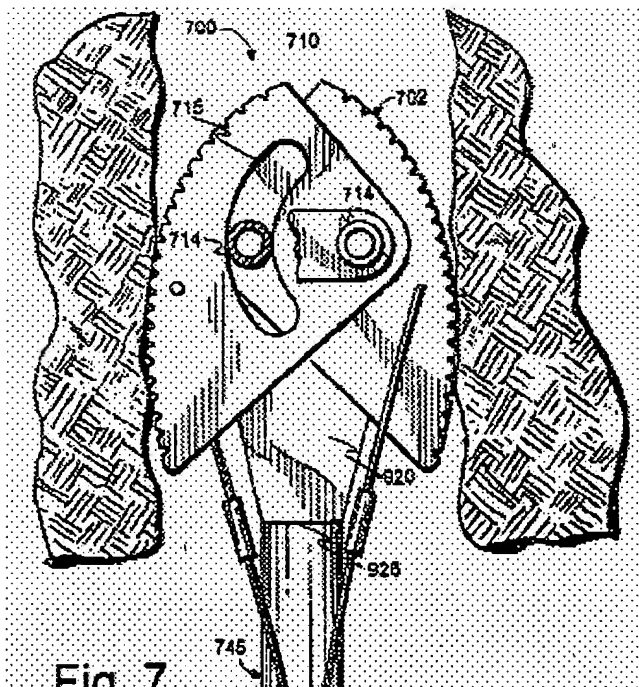
Art Unit: 3632

to the surface of the rocks is of a small degree, the devices is not situated within the crevice securely. This small degree of contact area causes the placement of the cams to be of proper quality and would cause the aid with any slight movement due to force to allow the device to fall out of the crevice because there would be no other gripping teeth to maintain the aid within the space since the device is expanded so close to the end of its contact area.



Art Unit: 3632

The climber would know that if the cams are in a more compressed state (as shown best in Watts Figure 7 included below) that the contact area of the cams relative to the rocks is greater which allows the aid to move in the vertical direction slightly due to force without the high possibility of the aid falling out the crevice due to the aid be capable of expanding further and allowing the remaining teeth or gripping area to catch within the crevice or crack. Based on this the gripping teeth are clearly visible placement indicia for experienced climbers that indicated quality of placement.



Color-coding as supported by Kensey is well known in the art to indicate degrees of danger for example "green, yellow, and red zones" are known to indicate various degrees of danger.

Art Unit: 3632

Red is known for stop or a high degree of danger, yellow is known for caution or a moderate degree of danger, and green is known for safety, highest degree of safety, or lowest degree of danger (for example stop lights and water safety). It would have been obvious to one having ordinary skill in the art to have modified Jardine or Watts to have used the well known color coded zones/markings of green, yellow (as well known in the art, see Shivers 5,067,667) and red indicia on the stepped gripping means to indicate when the cam placement is not safe as taught by Kensey since the indicia being color coded provides the well known means for indicating safety.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

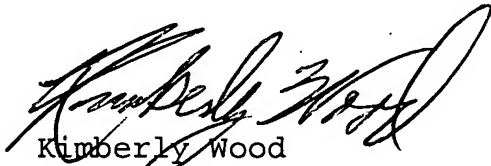
**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3632

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Kimberly Wood

**KIMBERLY WOOD  
PRIMARY EXAMINER**

Conferees:



Peter Cuomo PC

Carl Friedman CF

